

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**MARY ANDRUS; ELEANOR ARCHAMBEAU;
DIANE BONNEAU; LERTIS CALDWELL;
PRISCILLA COTE; THERESA DEJOY; LAURAL
FANKHAUSER; NANCY KENNEDY; BARBARA
WILLIAMS; LUCINDA YOEUELL,**

PLAINTIFFS,

v.

**INDEVUS PHARMACEUTICALS, INC., F/K/A
INTERNEURON PHARMACEUTICALS, INC.;
WYETH, INC; F/K/A AMERICAN HOME
PRODUCTS CORPORATION; WYETH
PHARMACEUTICALS, INC F/K/A WYETH-AYERST
PHARMACEUTICALS, INC.; A DIVISION OF
AMERICAN HOME PRODUCTS CORPORATION;
AND BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC.,**

DEFENDANTS.

**CIVIL ACTION
NO. 04-10911-GAO**

**DEFENDANT WYETH’S MOTION TO STAY THIS CASE AND ALL OTHER
DIET DRUG CASES REMOVED TO THIS COURT PENDING TRANSFER**

Wyeth moves this Court to stay proceedings in this case and all other diet drug cases removed to this Court and listed on attached Exhibit 1, pending transfer of this case and all other cases listed on Exhibit 1 to the MDL Court for diet drug litigation. As reason therefore, Wyeth states as follows.

1. This case is the first of 195 diet drug cases that are being removed from the Massachusetts Superior Court in Middlesex County.

2. Each of the 195 cases is a “tag-along” action to be transferred to MDL 1203, being administered by the Hon. Harvey Bartle III of the United States District Court for the Eastern District of Pennsylvania.

3. Of the 2,624 plaintiffs involved in these cases, only 43 are from Massachusetts. Plaintiffs have filed these cases in Massachusetts Superior Court and fraudulently joined parties in order to avoid federal diversity jurisdiction.

4. Plaintiffs have moved for remand, raising numerous issues requiring interpretation of the Nationwide Class Action Settlement Agreement and prior orders of the MDL Court. Wyeth anticipates that Plaintiffs in the remaining 194 cases will likewise move for remand raising similar issues.

5. Issues of remand, as well as fraudulent joinder, can and should be addressed by the MDL Court, which has exclusive jurisdiction to interpret the Settlement Agreement and is uniquely positioned to address these issues. Moreover, interests of judicial economy, efficiency and consistency will be served by a stay that will allow the MDL Court to decide all of the issues.

WHEREFORE, this Court should stay this case and all other diet drug cases removed to this Court pending transfer to the MDL Court. In further support thereof, Wyeth relies on its supporting memorandum of law.

Respectfully submitted this 18th day of June, 2004.

/s/ Janice W. Howe
William A. McCormack, BBO # 329580
Janice W. Howe, BBO # 242190
David Yamin, BBO # 562216
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110
(617) 951-8000

CERTIFICATE OF SERVICE

This is to certify that I have this day served Defendant Wyeth's Motion to Stay This Case And All Other Diet Drug Cases Removed to this Court Pending Transfer, and Wyeth's Memorandum in Support thereof, upon all parties to the above-captioned action by hand, by United States First Class Mail, postage prepaid, or by Federal Express to the following:

Counsel for Plaintiffs in *Andrus et al v. Indevus Pharmaceuticals, Inc. et al*

Edward J. Barshak (BBO No. 032040)
Michael S. Appel (BBO No. 543898)
Sugarman, Rogers, Barshak & Cohen, P.C.
101 Merrimac Street, 9th Floor
Boston, MA 02114

Samuel W. Lanham, Jr.
Cuddy & Lanham, P.A.
470 Evergreen Woods
Bangor, ME 04401

Neil D. Overholtz
Aylstock, Witkin & Sasser, P.L.C.
55 Baybridge Drive
PO Box 1147
Gulf Breeze, FL 32562-1147

Counsel of Record in other Massachusetts
State Court Diet Drug Actions filed in
Middlesex County

Russell T. Abney
Watts Law Firm, LLP
The Mellie Esperson Building, 16th Floor
815 Walker Street
Houston, TX 77002
(713) 225-0500
(713) 225-0566 fax

Donald G. Beebe
William K. Grisham
Donald G. Beebe, P.C.
P.O. Drawer 85029
Mobile, AL 36685-0249

Counsel for Defendants Indevus
Pharmaceuticals, Inc. and Boehringer
Ingelheim Pharmaceuticals, Inc. in *Andrus et
al v. Indevus Pharmaceuticals, Inc. et al*

Matthew J. Matule (BBO #632075)
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
Boston, Massachusetts 02108

T. Bryan Akin, III
Watts Law Firm, LLP
The Mellie Esperson Building, 16th Floor
815 Walker Street
Houston, TX 77002
(713) 225-0500
(713) 225-0566 fax

Robert J. Binstock (SBN 02328350)
Reich & Binstock, LLP
4265 San Felipe Street, Suite 1000
Houston, TX 77027
(713) 622-7271

Riley L. Burnett
Johnson, Burnett & Chang, L.L.P.
5005 Riverway, Suite 250
Houston, TX 77056

J. Robert Davis
Mignon Angelette Gill
Law Offices of J. Robert Davis, LLP
440 Louisiana, Suite 1930
Houston, TX 77002
(713) 425-5255

Michael P. Friedman (BBO No. 180200)
Brickley, Sears & Sorett, P.A.
75 Federal Street
Boston, MA 02110
(617) 542-0896

William R. Gray
John A. Purvis
Patrick T. Murphy
Purvis, Gray & Murphy, LLP
1050 Walnut Street, Suite 501
Boulder, CO 80302

Steven W. Harris
Harris Law Firm
4407 Parliament Drive
Alexandria, LA 71315-3701
(318) 487-1978

J. Christopher Ide
Miller & Associates
105 North Alfred Street
Alexandria, VA 22314

K. Stephen Jackson
Joseph L. Tucker
K. Stephen Jackson, P.C.
2229 First Avenue North
Birmingham, AL 35203
(205) 252-3535

Keith M. Jensen
Law Offices of Keith M. Jensen, P.C.
514 E. Belknap
Fort Worth, TX 76102
(817) 334-0762

Dana G. Kirk (SBN 11507500)
Kirk Law Firm
4265 San Felipe Street, Suite 1450
Houston, TX 77027
(713) 651-0050

David P. Matthews (Texas Bar No. 13206200)
Julie L. Rhoades (Texas Bar No. 16811710)
Abraham, Watkins, Nichols,
Sorrels, Matthews & Friend
800 Commerce Street
Houston, TX 77002-1776

Michael A. Lee
Stuart V. Kusin
Susman Godfrey L.L.P.
1000 Louisiana, Suite 5100
Houston, TX 77002
(713) 651-9366

J. Michael Moore
Guerra & Moore, Ltd., LLP
440 Louisiana, Suite 1510
Houston, TX 77002
(713) 223-4311

Greg McEwen
McEwen Law Firm Ltd.
5850 Blackshire Path
Inver Grove Heights, MN 55076

Dante G. Mummolo (BBO No. 360980)
Iannella and Mummolo
One Boston Place, Suite 3615
Boston, MA 02108
(617) 742-1388
(617) 742-1424 fax

John R. Oldham
Faddis, Oldham & Smith, P.A.
2709 W. Fairbank Avenue, Suite 200
Winter Park, FL 32789

Adam Pulaski
Pulaski & Middleman, L.L.C.
1177 West Loop South, Suite 400
Houston, TX 77027

Edward A. Williamson
Fenton B. Deweese, II
Tashia R. Shannon
The Edward A. Williamson Law Firm
509 Church Avenue
Philadelphia, MS 39350
(601) 656-5634

Napoli Kaiser Bern & Associates, LLP
3500 Sunrise Highway
Suite T-207
Great River, NY 11739
(631) 224-1133

W. Paul Wilkins
LeBlanc & Waddell
Essen Centre, Suite 420
Baton Rouge, LA 70809

/s/ Janice W. Howe
Janice W. Howe
*Counsel for Defendants Wyeth
and Wyeth Pharmaceuticals, Inc.*